

Sections

THE SARATOGA BLOG

Judge sides against Ballston in Dolomite case

By [Dennis Yusko](#) on December 17, 2015 at 2:26 PM

The town of Ballston may not use a law it passed in 2014 to block a Dolomite² Products Company's four-year-old application to build an asphalt production plant off Route 67, a judge ruled. The decision means that, barring a town appeal, the firm's project will soon return to the Planning Board for a ruling based on its merits.

Dolomite applied to build an asphalt mixing plant in the Curtis Industrial Park in 2011, when it was an allowed use. But the project has been held up by local opposition and votes cast by the Town Board in 2013 and 2014 to prohibit heavy industry in the park.

The company alleged the town illegally changed its zoning to stop a pending project, and sued it in separate lawsuits filed in state Supreme Court and the U.S. District Court for the Northern District of New York. This month, state Supreme Court Judge Robert Chauvin found the town misrepresented intentions, engaged in an ongoing course of actions which inordinately delayed Dolomite's application and prohibited the company from starting its project. Dolomite's attorney, Adam Schultz, said Thursday that in light of the decision, the company anticipates the Planning Board to decide on Dolomite's site plan application early next year and wants to start building the plant in the spring.

"We've always maintained we were a permitted use and the town was improperly interfering with the process," Schultz said. "We're not surprised, but there is satisfaction that a judge agrees based on the facts."

Dolomite, a sister company of Callanan Industries of Schenectady, secured a 20-year lease on 10 acres within Curtis Industrial Pk to build the plant, according to court papers. Asphalt produced at the plant would be used for municipal and town

projects. Some who live in the area say the plant would generate intolerable noise, odor and traffic.

In his decision (see below), Chauvin noted the company had spent about \$800,000 on its project application, but Schultz said legal fees, delays and other expenses associated with the project have cost the company at least \$2 million more than it should have had to spend. The federal suit filed by Dolomite alleges the town's decisions violated the company's civil rights and seeks \$4 million damages, he said.

Ballston Supervisor Patrick Ziegler said Thursday the town would respect Chauvin's decision. He said the Town Board would decide how to respond to the judge's ruling at its Dec. 29 meeting. "I personally would be very cautious about appealing this decision having already lost twice," Ziegler said. A 2013 zoning amendment passed by the Town Board was previously nullified by a different state judge.

Ballston will respond to the federal suit in early 2016, Ziegler said. Town of Ballston Attorney James Walsh declined comment.

[12-01-2015 Dolomite v. Ballston \(2\).pdf](#) by [Steven Bailey](#)